california legislature—2011–12 regular session

ASSEMBLY BILL No. 1396

Introduced by Committee on Labor and Employment (Swanson (Chair), Alejo, Allen, Furutani, and Yamada)

February 28, 2011

An act to amend Section 2751 of the Labor Code, relating to employment.

legislative counsel's digest

AB 1396, as introduced, Committee on Labor and Employment. Employment contract requirements.

Existing statutory law, which has been held invalid by existing case law, requires an employer who has no permanent and fixed place of business in the state and who enters into a contract of employment involving commissions as a method of payment with an employee for services to be rendered within the state to put the contract in writing and to set forth the method by which the commissions are required to be computed and paid. An employer who does not comply with those requirements is liable to the employee in a civil action for triple damages.

This bill would, by January 1, 2013, make this contract requirement applicable to all employers entering into a contract of employment involving commissions as a method of payment with an employee for services to be rendered in the state.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. The Legislature hereby finds and declares that this bill is enacted in light of the holding in Lett v. Paymentech, Inc. (N.D.Cal. 1999) 81 F.Supp.2d 992 and that the intent of this bill is to restore the employee protections that had been in effect prior to that holding by making Sections 2751 and 2752 of the Labor Code apply with equal force to employers with a fixed place of business in the state and to employers who do not have a fixed place of business in the state.

SEC. 2. Section 2751 of the Labor Code is amended to read:

2751. ~~Whenever any~~ *(a) By January 1, 2013, whenever an* employer ~~who has no permanent and fixed place of business in this State~~ enters into a contract of employment with an employee for services to be rendered within this ~~State~~ *state* and the contemplated method of payment of the employee involves commissions, the contract shall be in writing and shall set forth the method by which the commissions shall be computed and paid.

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(b) The employer shall give a signed copy of ~~each such~~ *the* contract to every employee who is a party thereto and shall obtain a signed receipt for the contract from each employee. *In the case of a contract that expires and where the parties nevertheless continue to work under the terms of the expired contract, the contract terms are presumed to remain in full force and effect until the contract is superseded or employment is terminated by either party.*

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(c) As used in this section, “commissions” *has the meaning set forth in Section 204.1. “Commissions”* does not include short term productivity bonuses such as are paid to retail clerks; and it does not include bonus and profit-sharing plans, unless there has been an offer by the employer to pay a fixed percentage of sales or profits as compensation for work to be performed.

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